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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
08 AT SEATTLE

09 JAMES ARTIS CASON, )  
10 )  
11 Petitioner, ) CASE NO. C11-1412-JLR  
12 )  
13 v. )  
14 ) REPORT AND RECOMMENDATION  
15 SCOTT FRAKES, et al. )  
16 )  
17 Respondents. )  
18 \_\_\_\_\_ )

19  
20 INTRODUCTION AND SUMMARY CONCLUSION

21 Petitioner James Cason has submitted to this Court for review a petition for writ of  
22 habeas corpus under 28 U.S.C. § 2254 in which he seeks to challenge a 2008 King County  
Superior Court judgment and sentence.<sup>1</sup> Respondent has filed a motion to dismiss the petition.  
Petitioner has not filed a response to respondent's motion. This Court, having carefully  
reviewed the petition, respondent's motion to dismiss, and the balance of the record, concludes

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<sup>1</sup> Petitioner was in the physical custody of the Washington Department of Corrections  
at the time he filed his federal habeas petition. However, it appears that petitioner has now  
been released from custody though his current whereabouts is unknown as petitioner has not  
updated his address with the Court.

01 that respondent's motion to dismiss should be granted and that petitioner's federal habeas  
02 petition, and this action, should be dismissed without prejudice.

03 PROCEDURAL HISTORY

04 In May 2008, petitioner was convicted, following a jury trial, on a charge of assault in  
05 the second degree while armed with a deadly weapon. (*See* Dkt. No. 9 at 43.) He was  
06 thereafter sentenced to a term of 72 months confinement. (*See id.*) Petitioner filed a notice of  
07 appeal on June 24, 2008, and the Washington Court of Appeals affirmed petitioner's conviction  
08 on August 30, 2010. (*See* Dkt. No. 14, Ex. 2 at 1 and 6.) Petitioner thereafter filed a petition  
09 for review in the Washington Supreme Court and the Supreme Court denied review on August  
10 10, 2011. (*See id.*, Ex. 2 at 1.) The Court of Appeals issued its mandate terminating direct  
11 review on October 28, 2011. (*Id.*)

12 On November 29, 2010, while his petition for review was pending in the Washington  
13 Supreme Court, petitioner filed a personal restraint petition in the Washington Court of  
14 Appeals. (*See id.*, Ex. 1.) On December 22, 2010, the Court of Appeals issued an order  
15 staying the petition pending issuance of the mandate in his direct appeal. (*Id.*) While it is not  
16 clear whether the stay has yet been lifted by the Court of Appeals, despite issuance of the  
17 mandate in petitioner's direct appeal, it nonetheless appears clear that the petition remains  
18 pending in the Court of Appeals at this juncture. (*Id.*)

19 Petitioner submitted his federal habeas petition to the Court for filing on August 25,  
20 2011. (Dkt. No. 1.) On October 4, 2011, this Court issued an Order directing that the petition  
21 be served on respondent and that respondent file an answer to the petition within 45 days after  
22 being served. (Dkt. No. 10.) On November 15, 2011, respondent filed the pending motion to

01 dismiss in lieu of an answer to the petition. (Dkt. No. 14.) Petitioner has not filed any  
02 opposition to the motion.

03 DISCUSSION

04 Respondent argues that this Court should dismiss petitioner's federal habeas petition,  
05 without prejudice, because petitioner's personal restraint petition remains pending in the state  
06 courts. Respondent asserts that, given the pendency of the personal restraint petition, the  
07 Court of Appeals will not release the state court files pertaining to the conviction at issue in this  
08 case and, thus, respondent is simply unable to address issues relevant to petitioner's federal  
09 habeas claims at this time. Respondent also asserts that petitioner's federal habeas petition is  
10 simply not ripe for review at this juncture.

11 A review of the exhibits which petitioner attached to his federal habeas petition suggests  
12 that respondent likely does have sufficient information at this time to file an answer to the  
13 petition. However, so long as petitioner has a challenge pending in the state courts to the same  
14 conviction at issue in these proceedings, it would be premature for this Court to entertain  
15 petitioner's federal habeas petition. Accordingly, respondent's motion to dismiss should be  
16 granted.

17 Certificate of Appealability

18 A petitioner seeking post-conviction relief under § 2254 may appeal a district court's  
19 dismissal of his federal habeas petition only after obtaining a certificate of appealability (COA)  
20 from a district or circuit judge. A certificate of appealability may issue only where a petitioner  
21 has made "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C.  
22 § 2253(c)(3). A petitioner satisfies this standard "by demonstrating that jurists of reason could

01 disagree with the district court's resolution of his constitutional claims or that jurists could  
02 conclude the issues presented are adequate to deserve encouragement to proceed further.”  
03 *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, this Court concludes that  
04 petitioner is not entitled to a certificate of appealability in this matter.

05 CONCLUSION

06 For the reasons set forth above, this Court recommends that respondent’s motion to  
07 dismiss be granted, and that petitioner’s petition for writ of habeas corpus and this action be  
08 dismissed without prejudice. This Court further recommends that a certificate of appealability  
09 be denied. A proposed order accompanies this Report and Recommendation.

10 DATED this 6th day of February, 2012.

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13 Mary Alice Theiler  
14 United States Magistrate Judge  
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